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JOSEPH F. SPANIOL, JR.
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No. 88-846

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

GERALD M. SPARKS - - - - Petitioner

versus

CHARACTER AND FITNESS COMMITTEE
OF KENTUCKY,
JUNIUS J. BEAVER, JR.,
THOMAS P. BELL,
GRANT M. HELMAN,
WILLIAM J. BAIRD, III,
STUART E. LAMPE,
PAT GILL - - - - - - Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT. I'm going to make this reply brief as short as possible and to the point.

On January 19, 1988 docket #87-275 you held in Petitioner Sparks' favor by a 8 - 0 vote. The petition for writ of certiorari was granted. By an 8 - 0 vote the judgment was vacated and the case remanded to the United States Court of Appeals for the 6th Circuit in light of *Forrester* v. *White,* 484 U.S. —, 98 L. Ed. 555, 108 S. Ct. — (1988).

The writ of certiorari should be granted because

1. Petitioner was never afforded a Due Process hearing as required by U.S. Supreme Court case law. See *Willner,* 373 U.S. 96, and the *Louis* case, 490 F. Supp. 1174, and
2. The Character and Fitness Committee composed of only lawyers has no immunity from civil liability.
3. Even the respondents do not believe they have immunity from civil liability, because they wrote a new supreme court rule of Kentucky in their attempt to acquire immunity *after* the Character and Fitness Committee was sued by the Petitioner.

When a Judge does not have any immunity from civil liability when he exercises purely *an administrative* function, see *Forrester* v. *White,* 484 U.S. —, (1988), how can *a mere lawyer* have immunity from civil liability? The petitioner was blackballed after

a five minute interview and *before* the bar applicant took any bar exam, a letter was placed in applicant's file which prevented him from ever being passed on the Kentucky Bar Exam.

When you pay your money for a professional exam, you expect a fair and equal opportunity of being passed. The one man Character and Fitness Committee knew the petitioner *before* the petitioner took any bar exam, was not going to be passed on his bar exam because he had been blackballed. Doesn't this type of extreme and outrageous conduct shock the conscience of this court? Thirty states have now abolished the Character and Fitness interview because it serves no *useful purpose.*

Petitioner would call taking a man's money for a professional exam, knowing you never intended to pass that man a perfect example of theft by deception.

Every man in this country is supposed to have a *fair and equal* opportunity; the very foundation of this country is based upon this basic principle. What legal right does a mere lawyer who interviews prospective bar members for less than 5 minutes, have for blackballing a man simply because he does not like the applicant's *physical appearance?* Certainly the applicant's knowledge, time, and effort in graduating from law school *should far outweigh* what one man thinks of you for 5 minutes. Petitioner worked very hard for his education, and a lot of hard work, time, and effort went into obtaining his JD Law Degree. A man's mind is a horrible commodity to waste! There

is no legal justification for a letter in an applicants folder preventing him from pursuing his chosen profession, namely the practice of law. Petitioner had a B average in law school, and is now being denied his chosen profession simply because a man he had never met before placed a letter in his file which prevented him from ever being passed on the Kentucky Bar Exam!

Make no mistake about it, the petitioner was never supposed to find the letter that Beaver Jr. had placed in his file! Petitioner's hard work of studying, going the bar review courses, and knowing that he was always passing the bar exam, but for some reason was not being passed is what made him suspicious and wanting to see what was in his folder. Written on the outside of his folder were the words "DO NOT PASS" . . . Petitioner asks this respected court how discriminatory is that! ! !

When you take a man's money for a professional exam, you must provide him with *a fair and equal* opportunity of being passed. Petitioner never had a fair and equal opportunity of being passed on the Kentucky Bar Exam! Even if they had immunity in the first place, they certainly *waived* that immunity when they continued to take petitioner's money for a professional exam, knowing they (the CFC) never intended to pass the applicant.

The petitioner has no criminal record; but he can show you numerous convicted felons who are practicing law in Kentucky! ! These men are suspended or

license revoked and then after a period of time they are allowed to reapply and are readmitted to the Bar.

The Petitioner's 5th, 6th, 8th and 14th Amendment rights were violated. The petitioner was not afforded and *Due Process.* U.S. Supreme Court Case Law requires a prospective Bar Member to receive *Due Process. See Willner* case at 373 U.S. 96, and the *Louis* case 490 F. Supp. 1174.

Basic and *fundamental fairness* dictate you do not arbitrarily and capriciously place a letter in an applicants folder, without his knowledge and consent, preventing him from ever being passed on the Kentucky Bar Exam! Make no mistake about it, *the respondents never intended* for the petitioner to find the letter in his folder dated 1980 and *before* the petitioner took any exam, nor did they intend for him to see the words "DO NOT PASS," written on the outside of his folder. The respondents wanted the petitioner to believe he was too dumb or stupid to pass the Kentucky Bar Exam! !

Even The Respondents Don't Believe They Have Any Immunity From Civil Liability! ! The reason is that after they were sued by the Petitioner they wrote a *brand new rule* (Ky. Supreme Court Rule) in their attempt to obtain immunity from civil liability. If they thought (the CFC) they had immunity in the first place, why would they go to all the time, trouble, and expense of writing a new supreme court rule (Ky.) *after they were sued* by the petitioner? The petitioner and others wonder how many other people have they

done this to? Why would they write a new Ky. Supreme Court Rule if Sparks (the petitioner) was the only man they ever did it to?

The *old rule* was 2.060 and the *new rule* is 3.160(4) which the respondents very conveniently forgot to mention in their brief! Copies of the old rule and the new rule are in my original brief.

There can be no legal reason or justification for the Character and Fitness Committee receiving quasi immunity. By their own admission, they don't believe they have any immunity! The respondents wrote a new Supreme Court Rule of Kentucky after they were sued by the Petitioner. The mere fact that applicants have been blackballed for years and years does not make it right nor does it justify this extreme and outrageous conduct! Petitioner is the first man ever in the history of this country to find a letter in his folder that in effect said, "DO NOT PASS." The letter was in his folder *before* he took any exam. Nor is it a valid public policy to continue this discriminatory practice.

Please don't forget what is right is right and what is wrong is wrong, and it is not only wrong it is *inherently wrong* to take a bar applicant's money 4 times for a professional exam, knowing you never intend to pass him because of a letter placed in his folder *before* he takes any bar exam! Merely interviewing prospective bar members is nothing more than an *administrative function* and no immunity from civil liability can attach. When a Judge does not have immunity from

civil liability how can you allow a *mere lawyer immunity* when he exercises purely an *administrative function* when he interviews prospective bar members *before* they take any bar exam.

CONCLUSION

The petition states a very valid reason for the court to hear this case. This case represents a *landmark* case in this country. Petitioner was never afforded any *Due Process* as required by U.S. Case law namely the *Willner* and *Louis* cases which have been previously cited. *Forrester* v. *White*, 484 U.S. —, 98 L. Ed. 555 (1988) supports the petitioner and indicates that if a Judge does not have immunity from civil liability, certainly lawyers who compose a Character and Fitness Committee would not have any immunity! Petitioner, therefore, respectfully requests that this court grant Sparks' petition. If and when granted the petitioner would like the following relief. Waived into the Kentucky Bar, awarded $820,000 in damages, ($150,000 in compensatory damages, and $500,000 in punitive damages), and have the respondents pay petitioner's filing fee and printing costs.

If this case has to be remanded back to the 6th Circuit, petitioner would like for a different 3 Judge panel to hear this case, because the original 3 Judge panel did not follow the mandate or instructions given to them by this respected court, and award the petitioner his damage of $820,000 and waive him into the Bar under Federal rule 11. Perhaps sanctions

should be imposed on Karpansky, Ryan, and Engel for not following the instructions set forth by the U.S. Supreme Court. Keep in mind that the letter was placed in petitioner's folder in 1980 and *before* he took any bar exam.

Respectfully submitted,

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Petitioner